



Understanding an Operating Agreement and Its Amendments

Issue:

This brief explains the function of the Operating Agreement, how it is used during the verification process, and how it is amended.

(For purposes of this brief, the regulations when referring to Service-Disabled Veterans applies equally to Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulations:

13 CFR 125.12(c) provides that “[i]n the case of a concern which is a limited liability company, at least 51 % of each class of member interest must be unconditionally owned by one or more service-disabled veterans.”

13 CFR 125.13(a) provides that “[c]ontrol by one or more service-disabled veterans means that both the long-term decisions making and the day-to-day management and administration of the business operations must be conducted by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran).”

13 CFR 125.13 (d) provides that “[i]n the case of a limited liability company, one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran) must serve as managing members, with control over all decisions of the limited liability company.”

What This Means:

Subpart B as referred to in 13 CFR § 125.11 is saying that anywhere in the regulations where the term Service-Disabled Veteran is used, it is equally applicable to Veterans for purposes of determining eligibility.

An Operating Agreement should address the ownership and control requirements found under 13 CFR § 125.12(a) and 13 CFR §§ 125.13(a) and (d).

An Operating Agreement is an agreement among members of a limited liability company (LLC) that governs the financial interests, affairs, and the rights and duties of the members to each other and non-members. Some states do not require LLCs to have operating agreements, however, those states generally impose certain default requirements by statute that outline the relationship of the members to each other and non-members.

The Center for Verification and Evaluation (CVE) will not require a company to create an operating agreement if it is not mandated by the State. However, without an operating agreement or comprehensive articles of organization, CVE must rely upon the default requirements imposed by the State in which the business’ articles of organization are filed. CVE does not consider letters of explanation as official documentation to establish Veteran ownership or the control functions held by members and managers of the business.

The CVE verification examination is unlikely to find that a firm is eligible for inclusion in the VIP database when there is no Operating Agreement and there are several owners. CVE relies on each business concern to provide information that can be used to understand

day-to-day management and long-term decision making.

Amendments to Operating Agreements

Typically, Operating Agreements may only be amended through specified processes and are therefore not generally subject to alteration or amendment solely by meeting minutes. In most cases, operating agreements are amended by (1) an addendum (executed by the LCC membership) or (2) a complete rewrite of the document that incorporates the proposed amendments. Once executed by the members, the amended operating agreement will then be the controlling document which governs ownership and control of the LLC.

CVE considers the ability to amend the Operating Agreement to be a business decision that the Veteran(s) must unilaterally control. Therefore, if the Operating Agreement contains a provision that requires the approval of the non-Veteran member(s) in order to amend the Operating Agreement, CVE would generally find that the Veteran has not demonstrated control as required by the regulation.

FOR INFORMATIONAL PURPOSES ONLY

This information has been provided by the U.S. Department of Veterans Affairs (VA) Office of Small and Disadvantaged Business Utilization (OSDBU) for general informational purposes and should not be construed as providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. In addition, VA OSDBU makes no representation as to the accuracy or whether the above information is currently up-to-date. All applicants and participants must read the applicable regulations and determine how best to meet these requirements. This [Verification Assistance Brief](#) does not constitute legal notice or replace governing regulations.

For more information about VA Small and Veteran Business Programs, visit <http://www.va.gov/osdbu>.

VA Office of Small and Disadvantaged Business Utilization

1-866-584-2344

Monday-Friday | 8 a.m. to 6 p.m. (Eastern)

Status Update:

verificationfollowup@va.gov

Profile Questions: vip@va.gov